

As Introduced

135th General Assembly

Regular Session

2023-2024

S. B. No. 146

Senators Smith, Craig

Cosponsors: Senators Antonio, DeMora, Hicks-Hudson, Ingram, Sykes

A BILL

To amend sections 4111.02, 4111.05, 4111.09, and
4111.14 and to repeal section 4111.07 of the
Revised Code to increase the state minimum wage.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4111.02, 4111.05, 4111.09, and
4111.14 of the Revised Code be amended to read as follows:

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Sec. 4111.02. ~~(A) Every employer, as defined in Section~~
~~34a of Article II, Ohio Constitution, shall pay each of the~~
~~employer's employees at a wage rate of not less than the wage-~~
~~rate specified in Section 34a of Article II, Ohio~~
~~Constitution~~following wage rates:

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(1) During the period beginning January 1, 2024, and
ending December 31, 2024, twelve dollars per hour;

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(2) During the period beginning January 1, 2025, and
ending December 31, 2025, thirteen dollars per hour;

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(3) During the period beginning January 1, 2026, and
ending December 31, 2026, fourteen dollars per hour;

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(4) During the period beginning January 1, 2027, and

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ending December 31, 2027, fifteen dollars per hour.

~~The~~ (B) On September 30, 2027, and every thirtieth day of
September thereafter, the director of commerce annually shall
adjust the wage rate as specified in division (A) (4) of this
section in accordance with Section 34a of Article II, Ohio
Constitution. The adjusted wage rate takes effect on the first
day of January immediately following the date of the adjustment.

(C) No political subdivision shall establish a minimum
wage rate different from the wage rate required under this
section.

(D) As used in this section, "employee" has the same
meaning as in section 4111.14 of the Revised Code.

Sec. 4111.05. The director of commerce shall adopt rules
in accordance with Chapter 119. of the Revised Code as the
director considers appropriate to carry out the purposes of
sections 4111.01 to 4111.17 of the Revised Code. The rules may
be amended from time to time and may include, but are not
limited to, rules defining and governing ~~apprentices, their~~
~~number, proportion, and length of service,~~ bonuses and special
pay for special or extra work; permitted deductions or charges
to employees for board, lodging, apparel, or other facilities or
services customarily furnished by employers to employees;
inclusion of ascertainable gratuities in wages paid; allowances
for unascertainable gratuities or for other special conditions
or circumstances which may be usual in particular employer-
employee relationships; and the method of computation or the
period of time over which wages may be averaged to determine
whether the minimum wage or overtime rate has been paid.

Sec. 4111.09. Every employer subject to sections 4111.01

to 4111.17 of the Revised Code, or to any rules issued 47
thereunder, shall keep a summary of the sections, approved by 48
the director of commerce, and copies of any applicable rules 49
issued thereunder, or a summary of the rules, posted in a 50
conspicuous and accessible place in or about the premises 51
wherein any person subject thereto is employed. The director of 52
commerce shall make the summary described in this section 53
available on the web site of the department of commerce. The 54
director shall update this summary as necessary, but not less 55
than annually, in order to reflect changes in the minimum wage 56
rate as required under Section 34a of Article II, Ohio 57
Constitution, and section 4111.02 of the Revised Code. Employees 58
and employers shall be furnished copies of the summaries and 59
rules by the state, on request, without charge. 60

Sec. 4111.14. (A) Pursuant to the general assembly's 61
authority to establish a minimum wage under Section 34 of 62
Article II, Ohio Constitution, this section is in implementation 63
of Section 34a of Article II, Ohio Constitution. In implementing 64
Section 34a of Article II, Ohio Constitution, the general 65
assembly hereby finds that the purpose of Section 34a of Article 66
II, Ohio Constitution, is to: 67

(1) Ensure that Ohio employees, as defined in division (B) 68
(1) of this section, are paid the wage rate required by section 69
4111.02 of the Revised Code in accordance with Section 34a of 70
Article II, Ohio Constitution; 71

(2) Ensure that covered Ohio employers maintain certain 72
records that are directly related to the enforcement of the wage 73
rate requirements ~~in~~ of Section 34a of Article II, Ohio 74
Constitution and section 4111.02 of the Revised Code; 75

(3) Ensure that Ohio employees who are paid the wage rate 76

required by ~~Section 34a of Article II, Ohio Constitution~~ section 4111.02 of the Revised Code, may enforce their right to receive that wage rate in the manner set forth in Section 34a of Article II, Ohio Constitution; and

(4) Protect the privacy of Ohio employees' pay and personal information specified in Section 34a of Article II, Ohio Constitution, by restricting an employee's access, and access by a person acting on behalf of that employee, to the employee's own pay and personal information.

(B) In accordance with Section 34a of Article II, Ohio Constitution, the terms "employer," "employee," "employ," "person," and "independent contractor" have the same meanings as in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 203, as amended. In construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section:

(1) "Employee" means individuals employed in Ohio, but does not mean individuals who are excluded from the definition of "employee" under 29 U.S.C. 203(e) or individuals who are exempted from the minimum wage requirements in 29 U.S.C. 213 and from the definition of "employee" in this chapter.

(2) "Employ" and "employee" do not include any person acting as a volunteer. In construing who is a volunteer, "volunteer" shall have the same meaning as in sections 553.101 to 553.106 of Title 29 of the Code of Federal Regulations, as amended, and due consideration and great weight shall be given to the United States department of labor's and federal courts'

interpretations of the term "volunteer" under the Fair Labor 107
Standards Act and its regulations. 108

(3) "Employer" does not include a franchisor with respect 109
to the franchisor's relationship with a franchisee or an 110
employee of a franchisee, unless the franchisor agrees to assume 111
that role in writing or a court of competent jurisdiction 112
determines that the franchisor exercises a type or degree of 113
control over the franchisee or the franchisee's employees that 114
is not customarily exercised by a franchisor for the purpose of 115
protecting the franchisor's trademark, brand, or both. For 116
purposes of this division, "franchisor" and "franchisee" have 117
the same meanings as in 16 C.F.R. 436.1. 118

(4) Subject to division (B)(5) of this section, "employee" 119
does not include an individual who operates a vehicle or vessel 120
in the performance of services for or on behalf of a motor 121
carrier transporting property and to whom all of the following 122
factors apply: 123

(a) The individual owns the vehicle or vessel that is used 124
in performing the services for or on behalf of the carrier, or 125
the individual leases the vehicle or vessel under a bona fide 126
lease agreement that is not a temporary replacement lease 127
agreement. For purposes of this division, a bona fide lease 128
agreement does not include an agreement between the individual 129
and the motor carrier transporting property for which, or on 130
whose behalf, the individual provides services. 131

(b) The individual is responsible for supplying the 132
necessary personal services to operate the vehicle or vessel 133
used to provide the service. 134

(c) The compensation paid to the individual is based on 135

factors related to work performed, including on a mileage-based 136
rate or a percentage of any schedule of rates, and not solely on 137
the basis of the hours or time expended. 138

(d) The individual substantially controls the means and 139
manner of performing the services, in conformance with 140
regulatory requirements and specifications of the shipper. 141

(e) The individual enters into a written contract with the 142
carrier for whom the individual is performing the services that 143
describes the relationship between the individual and the 144
carrier to be that of an independent contractor and not that of 145
an employee. 146

(f) The individual is responsible for substantially all of 147
the principal operating costs of the vehicle or vessel and 148
equipment used to provide the services, including maintenance, 149
fuel, repairs, supplies, vehicle or vessel insurance, and 150
personal expenses, except that the individual may be paid by the 151
carrier the carrier's fuel surcharge and incidental costs, 152
including tolls, permits, and lump sum fees. 153

(g) The individual is responsible for any economic loss or 154
economic gain from the arrangement with the carrier. 155

(5) A motor carrier may elect to consider an individual 156
described in division (B) (4) of this section as an employee for 157
purposes of this section. 158

(6) "Motor carrier" has the same meaning as in section 159
4923.01 of the Revised Code. 160

(C) In accordance with Section 34a of Article II, Ohio 161
Constitution, the state may issue licenses to employers 162
authorizing payment of a wage below that required by Section 34a 163
of Article II, Ohio Constitution, or section 4111.02 of the 164

Revised Code to individuals with mental or physical disabilities 165
that may otherwise adversely affect their opportunity for 166
employment. In issuing such licenses, the state shall abide by 167
the rules adopted pursuant to section 4111.06 of the Revised 168
Code. 169

(D) (1) In accordance with Section 34a of Article II, Ohio 170
Constitution, individuals employed in or about the property of 171
an employer or an individual's residence on a casual basis are 172
not included within the coverage of Section 34a of Article II, 173
Ohio Constitution. As used in division (D) of this section: 174

(a) "Casual basis" means employment that is irregular or 175
intermittent and that is not performed by an individual whose 176
vocation is to be employed in or about the property of the 177
employer or individual's residence. In construing who is 178
employed on a "casual basis," due consideration and great weight 179
shall be given to the United States department of labor's and 180
federal courts' interpretations of the term "casual basis" under 181
the Fair Labor Standards Act and its regulations. 182

(b) "An individual employed in or about the property of an 183
employer or individual's residence" means an individual employed 184
on a casual basis or an individual employed in or about a 185
residence on a casual basis, respectively. 186

(2) In accordance with Section 34a of Article II, Ohio 187
Constitution, employees of a solely family-owned and operated 188
business who are family members of an owner are not included 189
within the coverage of Section 34a of Article II, Ohio 190
Constitution. As used in division (D) (2) of this section, 191
"family member" means a parent, spouse, child, stepchild, 192
sibling, grandparent, grandchild, or other member of an owner's 193
immediate family. 194

(E) In accordance with Section 34a of Article II, Ohio 195
Constitution, an employer shall at the time of hire provide an 196
employee with the employer's name, address, telephone number, 197
and other contact information and update such information when 198
it changes. As used in division (E) of this section: 199

(1) "Other contact information" may include, where 200
applicable, the address of the employer's internet site on the 201
world wide web, the employer's electronic mail address, fax 202
number, or the name, address, and telephone number of the 203
employer's statutory agent. "Other contact information" does not 204
include the name, address, telephone number, fax number, 205
internet site address, or electronic mail address of any 206
employee, shareholder, officer, director, supervisor, manager, 207
or other individual employed by or associated with an employer. 208

(2) "When it changes" means that the employer shall 209
provide its employees with the change in its name, address, 210
telephone number, or other contact information within sixty 211
business days after the change occurs. The employer shall 212
provide the changed information by using any of its usual 213
methods of communicating with its employees, including, but not 214
limited to, listing the change on the employer's internet site 215
on the world wide web, internal computer network, or a bulletin 216
board where it commonly posts employee communications or by 217
insertion or inclusion with employees' paychecks or pay stubs. 218

(F) In accordance with Section 34a of Article II, Ohio 219
Constitution, an employer shall maintain a record of the name, 220
address, occupation, pay rate, hours worked for each day worked, 221
and each amount paid an employee for a period of not less than 222
three years following the last date the employee was employed by 223
that employer. As used in division (F) of this section: 224

(1) "Address" means an employee's home address as 225
maintained in the employer's personnel file or personnel 226
database for that employee. 227

(2) (a) With respect to employees who are not exempt from 228
the overtime pay requirements of the Fair Labor Standards Act or 229
this chapter, "pay rate" means an employee's base rate of pay. 230

(b) With respect to employees who are exempt from the 231
overtime pay requirements of the Fair Labor Standards Act or 232
this chapter, "pay rate" means an employee's annual base salary 233
or other rate of pay by which the particular employee qualifies 234
for that exemption under the Fair Labor Standards Act or this 235
chapter, but does not include bonuses, stock options, 236
incentives, deferred compensation, or any other similar form of 237
compensation. 238

(3) "Record" means the name, address, occupation, pay 239
rate, hours worked for each day worked, and each amount paid an 240
employee in one or more documents, databases, or other paper or 241
electronic forms of record-keeping maintained by an employer. No 242
one particular method or form of maintaining such a record or 243
records is required under this division. An employer is not 244
required to create or maintain a single record containing only 245
the employee's name, address, occupation, pay rate, hours worked 246
for each day worked, and each amount paid an employee. An 247
employer shall maintain a record or records from which the 248
employee or person acting on behalf of that employee could 249
reasonably review the information requested by the employee or 250
person. 251

An employer is not required to maintain the records 252
specified in division (F) (3) of this section for any period 253
before January 1, 2007. On and after January 1, 2007, the 254

employer shall maintain the records required by division (F) (3) 255
of this section for three years from the date the hours were 256
worked by the employee and for three years after the date the 257
employee's employment ends. 258

(4) (a) Except for individuals specified in division (F) (4) 259
(b) of this section, "hours worked for each day worked" means 260
the total amount of time worked by an employee in whatever 261
increments the employer uses for its payroll purposes during a 262
day worked by the employee. An employer is not required to keep 263
a record of the time of day an employee begins and ends work on 264
any given day. As used in division (F) (4) of this section, "day" 265
means a fixed period of twenty-four consecutive hours during 266
which an employee performs work for an employer. 267

(b) An employer is not required to keep records of "hours 268
worked for each day worked" for individuals for whom the 269
employer is not required to keep those records under the Fair 270
Labor Standards Act and its regulations or individuals who are 271
not subject to the overtime pay requirements specified in 272
section 4111.03 of the Revised Code. 273

(5) "Each amount paid an employee" means the total gross 274
wages paid to an employee for each pay period. As used in 275
division (F) (5) of this section, "pay period" means the period 276
of time designated by an employer to pay an employee the 277
employee's gross wages in accordance with the employer's payroll 278
practices under section 4113.15 of the Revised Code. 279

(G) In accordance with Section 34a of Article II, Ohio 280
Constitution, an employer must provide such information without 281
charge to an employee or person acting on behalf of an employee 282
upon request. As used in division (G) of this section: 283

(1) "Such information" means the name, address, 284
occupation, pay rate, hours worked for each day worked, and each 285
amount paid for the specific employee who has requested that 286
specific employee's own information and does not include the 287
name, address, occupation, pay rate, hours worked for each day 288
worked, or each amount paid of any other employee of the 289
employer. "Such information" does not include hours worked for 290
each day worked by individuals for whom an employer is not 291
required to keep that information under the Fair Labor Standards 292
Act and its regulations or individuals who are not subject to 293
the overtime pay requirements specified in section 4111.03 of 294
the Revised Code. 295

(2) "Acting on behalf of an employee" means a person 296
acting on behalf of an employee as any of the following: 297

(a) The certified or legally recognized collective 298
bargaining representative for that employee under the applicable 299
federal law or Chapter 4117. of the Revised Code; 300

(b) The employee's attorney; 301

(c) The employee's parent, guardian, or legal custodian. 302

A person "acting on behalf of an employee" must be 303
specifically authorized by an employee in order to make a 304
request for that employee's own name, address, occupation, pay 305
rate, hours worked for each day worked, and each amount paid to 306
that employee. 307

(3) "Provide" means that an employer shall provide the 308
requested information within thirty business days after the date 309
the employer receives the request, unless either of the 310
following occurs: 311

(a) The employer and the employee or person acting on 312

behalf of the employee agree to some alternative time period for 313
providing the information. 314

(b) The thirty-day period would cause a hardship on the 315
employer under the circumstances, in which case the employer 316
must provide the requested information as soon as practicable. 317

(4) A "request" made by an employee or a person acting on 318
behalf of an employee means a request by an employee or a person 319
acting on behalf of an employee for the employee's own 320
information. The employer may require that the employee provide 321
the employer with a written request that has been signed by the 322
employee and notarized and that reasonably specifies the 323
particular information being requested. The employer may require 324
that the person acting on behalf of an employee provide the 325
employer with a written request that has been signed by the 326
employee whose information is being requested and notarized and 327
that reasonably specifies the particular information being 328
requested. 329

(H) In accordance with Section 34a of Article II, Ohio 330
Constitution, an employee, person acting on behalf of one or 331
more employees, and any other interested party may file a 332
complaint with the state for a violation of any provision of 333
Section 34a of Article II, Ohio Constitution, or any law or 334
regulation implementing its provisions. Such complaint shall be 335
promptly investigated and resolved by the state. The employee's 336
name shall be kept confidential unless disclosure is necessary 337
to resolution of a complaint and the employee consents to 338
disclosure. As used in division (H) of this section: 339

(1) "Complaint" means a complaint of an alleged violation 340
pertaining to harm suffered by the employee filing the 341
complaint, by a person acting on behalf of one or more 342

employees, or by an interested party. 343

(2) "Acting on behalf of one or more employees" has the 344
same meaning as "acting on behalf of an employee" in division 345
(G) (2) of this section. Each employee must provide a separate 346
written and notarized authorization before the person acting on 347
that employee's or those employees' behalf may request the name, 348
address, occupation, pay rate, hours worked for each day worked, 349
and each amount paid for the particular employee. 350

(3) "Interested party" means a party who alleges to be 351
injured by the alleged violation and who has standing to file a 352
complaint under common law principles of standing. 353

(4) "Resolved by the state" means that the complaint has 354
been resolved to the satisfaction of the state. 355

(5) "Shall be kept confidential" means that the state 356
shall keep the name of the employee confidential as required by 357
division (H) of this section. 358

(I) In accordance with Section 34a of Article II, Ohio 359
Constitution, the state may on its own initiative investigate an 360
employer's compliance with Section 34a of Article II, Ohio 361
Constitution, and any law or regulation implementing Section 34a 362
of Article II, Ohio Constitution. The employer shall make 363
available to the state any records related to such investigation 364
and other information required for enforcement of Section 34a of 365
Article II, Ohio Constitution or any law or regulation 366
implementing Section 34a of Article II, Ohio Constitution. The 367
state shall investigate an employer's compliance with this 368
section in accordance with the procedures described in section 369
4111.04 of the Revised Code. All records and information related 370
to investigations by the state are confidential and are not a 371

public record subject to section 149.43 of the Revised Code. 372
This division does not prevent the state from releasing to or 373
exchanging with other state and federal wage and hour regulatory 374
authorities information related to investigations. 375

(J) In accordance with Section 34a of Article II, Ohio 376
Constitution, damages shall be calculated as an additional two 377
times the amount of the back wages and in the case of a 378
violation of an anti-retaliation provision an amount set by the 379
state or court sufficient to compensate the employee and deter 380
future violations, but not less than one hundred fifty dollars 381
for each day that the violation continued. The "not less than 382
one hundred fifty dollar" penalty specified in division (J) of 383
this section shall be imposed only for violations of the anti- 384
retaliation provision in Section 34a of Article II, Ohio 385
Constitution. 386

(K) In accordance with Section 34a of Article II, Ohio 387
Constitution, an action for equitable and monetary relief may be 388
brought against an employer by the attorney general and/or an 389
employee or person acting on behalf of an employee or all 390
similarly situated employees in any court of competent 391
jurisdiction, including the court of common pleas of an 392
employee's county of residence, for any violation of Section 34a 393
of Article II, Ohio Constitution, or any law or regulation 394
implementing its provisions within three years of the violation 395
or of when the violation ceased if it was of a continuing 396
nature, or within one year after notification to the employee of 397
final disposition by the state of a complaint for the same 398
violation, whichever is later. 399

(l) As used in division (K) of this section, 400
"notification" means the date on which the notice was sent to 401

the employee by the state. 402

(2) No employee shall join as a party plaintiff in any 403
civil action that is brought under division (K) of this section 404
by an employee, person acting on behalf of an employee, or 405
person acting on behalf of all similarly situated employees 406
unless that employee first gives written consent to become such 407
a party plaintiff and that consent is filed with the court in 408
which the action is brought. 409

(3) A civil action regarding an alleged violation of this 410
section shall be maintained only under division (K) of this 411
section. This division does not preclude the joinder in a single 412
civil action of an action under this division and an action 413
under section 4111.10 of the Revised Code. 414

(4) Any agreement between an employee and employer to work 415
for less than the wage rate specified in ~~Section 34a of Article~~ 416
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 417
defense to an action under this section. 418

(L) In accordance with Section 34a of Article II, Ohio 419
Constitution, there shall be no exhaustion requirement, no 420
procedural, pleading, or burden of proof requirements beyond 421
those that apply generally to civil suits in order to maintain 422
such action and no liability for costs or attorney's fees on an 423
employee except upon a finding that such action was frivolous in 424
accordance with the same standards that apply generally in civil 425
suits. Nothing in division (L) of this section affects the right 426
of an employer and employee to agree to submit a dispute under 427
this section to alternative dispute resolution, including, but 428
not limited to, arbitration, in lieu of maintaining the civil 429
suit specified in division (K) of this section. Nothing in this 430
division limits the state's ability to investigate or enforce 431

this section. 432

(M) An employer who provides such information specified in 433
Section 34a of Article II, Ohio Constitution, shall be immune 434
from any civil liability for injury, death, or loss to person or 435
property that otherwise might be incurred or imposed as a result 436
of providing that information to an employee or person acting on 437
behalf of an employee in response to a request by the employee 438
or person, and the employer shall not be subject to the 439
provisions of Chapters 1347. and 1349. of the Revised Code to 440
the extent that such provisions would otherwise apply. As used 441
in division (M) of this section, "such information," "acting on 442
behalf of an employee," and "request" have the same meanings as 443
in division (G) of this section. 444

(N) As used in this section, "the state" means the 445
director of commerce. 446

Section 2. That existing sections 4111.02, 4111.05, 447
4111.09, and 4111.14 of the Revised Code are hereby repealed. 448

Section 3. That section 4111.07 of the Revised Code is 449
hereby repealed. 450